

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4337 of 1995

WITH

SPECIAL CIVIL APPLICATION No 4384 OF 1995

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SPECIAL CIVIL APPLICATION No 4393 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A. S. BRAHMBHATT & ORS.

Versus

THE CHAIRMAN, THE GUJARAT SUBORDINATE SERVICES SELECTION
BOARD, GANDHINAGAR AND ANR.

Appearance: In all the Sp. Civil Applications.

Shri B.P.Tanna and Bharat T. Rao for the petitioners.

Shri D.A. Bhambhanian for the respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/07/1996

C.A.V. JUDGMENT

1. As common question of facts and law have arisen in all these Special Civil Applications, and as such, the

same are being disposed of by this common judgment.

2. Shri B.P.Tanna, senior advocate has advanced the main arguments in these Special Civil Applications. He submitted that the facts are common and as such, he made reference to the facts and the grounds with respect to Special Civil Application No.4384 of 1995. The facts of the case, in brief, are as under:

The petitioners, in all ten, in all these Special Civil Applications were appointed undisputedly, initially on daily wages in the year 1991 except the two petitioners namely I.A. Shaikh who has been appointed on 15-2-1992 and the petitioner, A.B. Shaikh who has been appointed though on adhoc temporary basis but in the pay scale of the post of the driver on 3-6-1990. These appointments had been made by the Chairman of the Gujarat Subordinate Services Selection Board at Gandhinagar, under the resolution of the Government dated 14th March, 1990, Annexure 'A' at page no.16 in the Special Civil Application No.4384 of 1995 under which the Chairman has been authorized to make appointment on daily wages to cope with the temporary increase of the work load in the Board. It is not in dispute that the petitioners had been appointed on the basis of their own applications meaning thereby there is no element of any selection in making of their appointments on daily wages. Their names have not been called from the Employment Exchange Office as well as from the social welfare department etc. Not only this, applications were also not invited from the open market. The petitioners continued to work on daily wages for some time and thereafter under the separate appointment order they have been given adhoc temporary appointment in the pay scale of their respective posts. A copy of such appointment order of one of the petitioners namely Jayant J. Trivedi has been filed at annexure 'D' to the Special Civil Application No.4384 of 1995 which is dated 11th July, 1992. The appointment had been given from 10th June, 1992. Similar orders have been passed in respect of other petitioners undisputedly. In the order dated 11th July, 1992, in Para 2 thereof a reference has been made to the Government Resolution No. DLJ/1064/3778/G dated 4-1-1965. It has been clarified in the said order of the appointment that these appointments had been made as per the resolution dated 4-1-1965, referred above. During the course of arguments today in the Court, Shri D.A. Bhambhani, learned counsel for the respondents no.1 and 2 has produced the copy of the resolution dated 4-1-1965, which has been taken on record. A copy of this resolution has been given to the learned counsel for the petitioners, Shri B.P. Tanna and he has no objection of taking of this document on record.

A copy of the appointment order made on daily wages has also been submitted by the petitioner at annexure 'C' to the Special Civil Application No.4384 of 1995 and the similar orders have been said to be made in respect of other petitioners. From the document, annexure 'C' dated 22nd July, 1991, it comes out that the appointment has been made on the basis of the application of the petitioner. The petitioners having the apprehension of the termination of their services have approached to this Court by filing Special Civil Applications No.8554, 8860, 9329, 9330 of 1992 and Special Civil Applications No.13 and 14 of 1993. The learned counsel for the petitioners and the respondents are in agreement that all the ten petitioners before this Court in these petitions were party to those Special Civil Applications. The counsel for the parties are also in agreement that in the aforesaid Special Civil Applications interim relief had been granted in favour of these petitioners against the respondent not to terminate their services and that interim relief had continued till the date of the decision of those Special Civil Applications. Those Special Civil Applications were decided by this Court on 6th of April, 1995. I will make reference of the judgment of this Court in those Special Civil Applications at the appropriate place in this judgment. Again having the apprehension of the termination of their services, the petitioners approached to this Court by filing the Special Civil Applications No.3547 to 3557 of 1995 and those Sp. Civil Applications have been decided by this Court on 5th May, 1995 and I will make the reference to this decision also at the appropriate place in this judgment. The respondent-Board published a seniority list of clerk/typist, driver and peons vide its order dated 8-5-1995 and these petitioners had been mentioned therein as irregularly appointed persons. Shri Tanna learned counsel for the petitioners has admitted that so far as the of seniority list is concerned, there is no dispute, but against the said list, petitioner submitted a representation to the Board dated 29th May, 1995 only against the word used whereby denoted the petitioners to be irregularly appointed. The services of the petitioners were terminated under the order dated 25th May, 1995 which led to filing of these Special Civil Applications. These Sp. Civil Applications have been contested by the respondents by filing the affidavit-in-reply. The affidavit-in-reply has been further supplemented by the filing of the further affidavit. The petitioners have filed the rejoinder to the reply.

3. Shri B.P.Tanna, learned counsel for the

petitioners contended that the matter has been concluded by this Court in the first set of the Special Civil Applications and the services of the petitioners could have been terminated only in case they fail to get selected in the open selection made by the Board. It has further been contended that the petitioners had been appointed on clear vacant posts. It is not material or significant whether the post was substantive, permanent or regular or temporary, the counsel for the petitioner contended that it was a case of appointment against the regular clear vacancy and these posts have not been abolished so far. Shri Tanna next contended that without giving the chance to the petitioners to appear before the board and compete in open selection, their services are not liable to be terminated. In this case the judgment of this Court given in first sets of Special Civil Applications is binding between the parties and the termination of services of the petitioners had been made contrary to the said decision. Though specific point has not been raised by the petitioners in the writ petition, but Shri Tanna learned counsel for the petitioners by making the reference to the Government resolution dated 9th August, 1994 and other notification of the even date, contended that the services of the petitioners should have been regularized as they are working for last about five years on the same lines as it has been done in the case of other persons under the aforesaid resolution and notification. With the consent of the parties, I have taken on record, the aforesaid resolution and the notification and I have also permitted the counsel for the petitioners to make the submission with reference to these resolution and notification as it is a pure question of law. In support of his contentions, Shri Tanna learned counsel for the petitioners has also placed reliance on the decision of the Supreme Court made in Civil Appeal No.4058 - 64 of 1988 on 15th November 1988, and the decision of this Court in Sp. Civil Application No.124 of 1986 decided on 4-7-1989.

4. On the other hand, learned counsel for the respondents Shri D.A. Bhambhanja contended that the petitioners have not disclosed an important fact before this Court that an identical issue has been decided by this Court (Coram : K.G. Shah,J) in Sp. Civil Application No.83 of 1993 decided on 20th September 1993 and the similar terminations of services were held to be legal and justified. Shri Bhambhanja urged that the decision of this Court (Coram : K.G.Shah,J) in Special Civil Application No.83 of 1993 has been cited before this Court when the first set of Special Civil Applications filed by the petitioners were decided and

after taking into consideration of the said decision, this Court has not protected the petitioners except to the extent to give them an opportunity to appear and compete in the open selection and the recommendation has been made to the Government to consider the question of relaxation of age sympathetically in their cases. Shri Bhambhanja, learned counsel for the respondent carrying further his contentions urged that both the daily wages appointment as well as the adhoc, temporary appointments of the petitioners are illegal. These are the cases of back door entries. In case any protection has been given by this court to the petitioners, then it will amount to perpetuate illegality i.e. the illegal appointments shall continue. Learned counsel Shri Bhambhanja made two fold clarificatory submissions. Firstly he contended that these petitioners will not be replaced by any daily wagger appointee or adhoc or temporary appointee. Secondly, Shri Bhambhanja, learned counsel for the respondent submitted that all these petitioners will be given an opportunity subject to the fulfillment of the eligibility criteria, as and when the selections are being made for the appointments to the post of Junior Clerks. Their cases for relaxation of age shall also be considered sympathetically as directed by this court in its earlier decision. On closing of his submissions, learned counsel for the respondents urged that none of the legal and fundamental rights of the petitioners has been infringed, and as such, these writ petitions should be dismissed. The termination of the services of the petitioners is legal, proper and justified. It is not a case where the petitioners have worked for years together. The petitioners substantial continuation in the employment is because of the interim relief granted by this court earlier in the first set of the Special Civil Applications then in the second set of the Special Civil Applications and lastly in these Sp. Civil Applications. If the period of the interim relief is excluded then the total working of the petitioners is not of a longer period as submitted by the counsel for the petitioner.

5. I have given my thoughtful consideration to the respective contentions advanced by the learned counsel for the parties.

6. None of the counsel appearing for the parties has brought to the notice of the Court, the relevant service rules which provides for the recruitment and other service conditions in the cadre of Junior Clerks. It is not a case of either of the parties that the recruitment rules have not been framed or are not in existence for

making the selection and appointments on the post of Junior clerks. From the facts which have come on the record, it is clear that the selection for appointment on the post of junior clerk is to be made by the Gujarat Subordinate Selection Board, an authority which has been constituted by the Government for the purpose of making selection on the post of Junior Clerks in the subordinate services of the State of Gujarat. Be that as it may, even if we proceed with the assumption that there are no recruitment rules laid down by the respondent, State of Gujarat, then the recruitments are to be made in accordance with the provisions of Article 14 and 16 of the Constitution of India. Article 16 of the Constitution of India provides that every eligible citizen of the country should be given equal opportunity in the public employment. Article 16 of the Constitution confers on every eligible citizen of this country, for a given employment, a right of consideration for appointment. It is a fundamental right. Whatever may be the nature of the appointment, normally every employer and particularly the State and its functionaries should have to provide equal opportunity to all the eligible citizens in the public employment. There may be some exceptions where necessity may have arisen for urgent temporary appointment for a short duration say for one month or two months, and in such cases, the requirement of all these procedures may not be strictly insisted, but the provisions of Article 14 and 16 cannot be allowed to be bypass by the employer by continuing such persons in the employment for indefinite period thereafter. For all the employment of urgent, temporary nature concerned, the employer has to undertake and exercise to give all the eligible citizens a right of consideration in the public employment. By continuing such a daily wagers in the service for years together or an adhoc, temporary appointee for years together, though their appointments are contrary to the provisions of Article 14 and 16 of the Constitution of India, these class of persons come before this Court claiming equities and going to the extent of praying for grant of relief of the regularization of their services. If in such cases, the Court comes to the rescue of such class of persons what it did, it protects the illegal appointees which normally this Court will not do sitting under Article 226 of the Constitution of India.

7. In the present case, Shri Tanna learned counsel for the petitioners fairly conceded that the petitioners' appointments as a daily wagers and as an adhoc, temporary were not made after any open market selection. Shri Tanna, learned counsel for the petitioner is unable to

point out any provision either from any of the Rules framed under Article 309 of the constitution of India and under any resolution of the Government which provides for making an adhoc, temporary appointment without making any selection.

8. The learned counsel for the respondents Shri D.A.Bhambhanian made a statement during the course of argument that recruitment on the post of clerks in the office of Gujarat Subordinate Services Selection Board has to be made by the Centralized recruitments and the selection are to be made by the said Board. This position has also not been disputed by the learned counsel for the petitioners. The Board, Shri Bhambhanian had contended, has been constituted for making centralized selection for the post of clerks etc.

9. Under the order dated 14th March 1990, annexure 'A' in the Special Civil Application No.4384 of 1995, the Chairman of the Board was given powers to make appointment on daily wages in class III and IV to cope up with the temporary increase in work of the Board. The Chairman, under the powers as given to it by the Government, has given appointment to the petitioners in this Special Civil Application, on daily wages. At no point of time, the Chairman has been given powers by the Government to make the appointment on adhoc or temporary basis in class III and IV. Though the Chairman was not having any powers from the Government to make adhoc and temporary appointments in class III and IV, the petitioners were given adhoc temporary adhoc appointments in the pay scale of the concerned posts on different dates in the year 1992. These adhoc temporary appointments of the petitioners have been made by the Chairman as per the Government Resolution dated 4.1.65 and a special reference has been made of this fact in the said order. This Resolution provides as under:

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fNature of f To be delegated f Scope f
fPowers f to f f
fckkkkkkkkkkkkkpkkkkkkkkkkkkkkkkkkkkkkpkkkkkkkkkkkkkkkkkkkkkn
fTo make f All Gazetted Heads f i)Temporary offi-f
fofficiaging f of offices. f ciating arrangem-f
fappointments f f ents should be f
fin vacancies f f made for a periodf
fin class III f f not exceeding 2 f
fposts. f f months. f
f f f f
f f f ii)Appointment f
f f f should be made f

f f f made from the f
f f f approved list of f
f f f candidates, if f
f f f any. If there f
f f f is no such list f
f f f appointments may f
f f f be directly. f
f f f f f
f f f iii)All such f
f f f appointments sho f
f f f uld be reported f
f f f immediately to f
f f f appointing f
f f f authority. f

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10. The Chairman as per the said resolution dated 4th January 1965, was empowered at the most to make temporary officiating arrangements for a period not exceeding two months. The adhoc and temporary appointments of the petitioners could have been made only for two months. Though in the order of appointment, the period has not been mentioned, but as it has been made as per the Resolution dated 4.1.65, those appointments could have been only for a period not exceeding two months.

11. The adhoc and temporary appointments of the petitioners would have come to an end on expiry of two months' period. It is a case of respondents that both the daily wages appointments as well as adhoc temporary appointments of the petitioners are illegal as these are back door entries. Earlier the petitioners have come up before this Court twice and in those proceedings this Court has not adjudicated on the question of legality of appointments of the petitioner on daily wages as well as on adhoc temporary basis. The petitioners have also not preferred to have any decision on their right of continuation in the employment. These writ petitions have been filed by the petitioners after termination of their services. The orders of termination has not been challenged in these Special Civil Applications specifically as no prayer has been made for quashing of the same. The copy of order of termination of service has been filed on record and the counsel for the petitioners has made submission challenging the validity thereof, as such it becomes necessary to examine the validity of the order of appointment of the petitioners on adhoc temporary basis.

12. The Resolution dated 4.1.65 is the general delegation of powers to the officers named therein to

make officiating appointments in the vacancies of class III. The Chairman of the Board is the head of the office and it may be accepted that he has powers to make temporary officiating arrangements. But those powers are subject to the conditions as laid down in the said Resolution. It is not the case of the respondents that the Chairman was not the head of the office. Under the Resolution dated 4.1.65 the Chairman of the Board is assigned necessary powers to make temporary officiating arrangements for a period not exceeding two months. Now the next question that arise is whether the appointment of the petitioners on adhoc temporary basis was legal and in conformity with the Resolution dated 4.1.65 or not. The Resolution dated 4.1.65 has taken care of the provisions of Article 14 and 16 of the Constitution of India and it has been provided thereunder that such appointments should be made from the approved list of candidates, if any, in existence. It is not the case of the petitioners that their names were there in the approved list. It is also not the case of the petitioners that any approved list was there in existence on the date on which they have been given adhoc temporary appointments. The Resolution has taken care of the situation where the approved list is not in existence as it is stipulated that if there is no such list, temporary officiating arrangements have to be made by making open selection. The words used in the Notification are, "if there is no such list appointments will be made directly" which means and should mean to afford opportunity to all the eligible candidates. The appointments of the petitioners on adhoc temporary basis were not made by the selection and for this reason, these appointments can conveniently be termed as illegal appointments or back door entries. When the appointments of the petitioners on adhoc temporary basis were itself illegal, they have no right to continue in the services on the basis of the said appointments. Apart from this, under the Resolution, the appointments could have been made only for two months. There is no provision in the Resolution which empowers appointing authority, herein, the Chairman of the Board to give any extension to the temporary arrangement made. It was only a fixed term appointment though it is not mentioned therein, but by necessary implication it was an appointment only for two months. When it was a case of fixed term appointment, the same has come to an end by afflux of time and in such case even the order of termination need not be made. It was purely a temporary arrangement for a fixed term. It is a settled law that the fixed term appointment comes to an end automatically by afflux of time and no order of termination needs to be made. A reference in this

respect may have to decision of this Court in the case of Bhanmati Tapubhai Muliya v. State of Gujarat, Principal Government Industrial Institute reported in 1995(2) GLH 228. Yet a temporary Government servant does not become permanent unless he acquires that capacity by force of any Rule or is declared as permanent servant. This position of law is also no more res integra. A reference in this respect may have to the decision of the Apex Court in the case of Madhya Pradesh Hasta Shilpa Vikas Nigam Limited v. Devendra Kumar Jain & Ors., reported in JT 1995(1) SC 198. The Resolution dated 4.1.65 only contemplates a temporary officiating arrangement for a period not exceeding two months and under this arrangement, the petitioners have not acquired any right to hold these posts. A reference in this respect may have to be made to another decision of the Apex Court in the case of State of Orissa & Anr. v. Dr.Prari Mohan Misra, reported in JT 1995(2) SC 54, and of this Court in the case of Patel Ashokkumar Babulal v. State of Gujarat & Ors., reported in 1995(2) GLH 640.

13. The petitioners were aware of the fact that their adhoc temporary appointments were only for two months. The Chairman has also, knowing well that under the Resolution dated 4.1.65, appointment cannot be made for a period exceeding two months, they sought to terminate services of the petitioners, but they could not make order of termination as some of the petitioners have approached to this Court in the month of November 1992 and this Court has protected them by grant of interim relief. All the petitioners were later on protected. The first set of writ petitions has been filed by the petitioners when the respondent-Board sought to terminate their services. I have called for the papers of the petitions of the first set and the papers of Special Civil Application No.8554 of 1992 have been received. This Special Civil Applications have been filed by the petitioner therein, Shri Jagat Jayendrabhai Trivedi on 13.11.92. Shri Jagat J. Trivedi is also the petitioner in this set of petitions in Special Civil Application No.4384 of 1995. On 2.12.92, this Court made an order in Special Civil Application No.8554 of 1992, which reads as under:

"Notice, and notice to interim relief returnable on 14.12.92. Ad-interim relief in terms of para 15 (C) till then on the condition that the petitioners will carry out any work as typist and/or clerk as may be assigned to him."

The respondent therein contested that petition. Civil

Application No.608 of 1995 has been filed by the respondents therein praying for vacating of the ad interim relief granted. On 6.4.95, the main petition has been disposed of as withdrawn and as such, on the Civil Application no order has been passed. In the file of Special Civil Application No.8554 of 1992, I found the copy of the decision given by this Court in the Special Civil Application No.83 of 1993 as well as decision of this Court given in Special Civil Application No.135 of 1993. When the Special Civil Application No.8554 of 1992 and cognate matters were decided by this Court, the Court was having a copies of judgments given in the aforesaid two Special Civil Applications. Except three petitioners, all other petitioners have been appointed on urgent temporary basis in the month of October or November. The petitioners have filed these Special Civil Applications even before expiry of two months' period and rightly so. In case the petitioners would not have filed these Special Civil Applications and they would not have been protected by interim relief, their services could have been brought to an end on expiry of two months' period. In three cases, though the appointments were continued for more than two months, but no order of extension has been produced and secondly that continuation beyond the period of two months was contrary to the Resolution dated 4.1.65.

14. When the appointment of the petitioners were only for a fixed term, it does not give any right to them to continue in services and the termination of their services under the order dated 22nd May 1995 does not suffer from any illegality or infirmity. The respondents are perfectly right to say that the services of the petitioners could not be terminated earlier as the ad interim relief granted in the first set of petitions was continued till 6th April 1995. I find sufficient merits in the contention of the counsel for respondents Shri Bhambhanja that in case the petitioners are ordered to continue in service then this Court will restore an illegal order of appointment and will allow the petitioners to work beyond the permissible period of appointments. This Court sitting under Article 226 of the Constitution of India, should normally decline to issue a writ of Mandamus or Certiorari where quashing of the action or the order impugned before this Court may restore an illegal action or order. In case writ is issued in these Special Civil Applications, then this Court will perpetuate illegality which should not be done while exercising powers under Article 226 of the Constitution of India. The termination of services of the petitioners under the order dated 22nd May 1995 is

perfectly legal and justified.

15. The petitioners, though specifically have not challenged the order of the termination of their service nor prayed for quashing the same, but as the substance of the prayer made in these Special Civil Applications is that they should be allowed to continue in services till their cases are considered for regular appointment, the grant of this prayer will certainly amount to setting aside of the order of termination which this Court should not do as it may result in perpetuating illegality.

16. In the first set of writ petitions and in these writ petitions, substantially the prayers made are identical. The prayer made in Special Civil Application No.8554 of 1992 reads as under:

"(A) the Hon'ble Court be pleased to admit this Special Civil Application;

(B) the Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, direction or order in the nature of writ of mandamus directing the respondent-Board to consider the case of the petitioner for being appointed on regular basis to the existing (regular) vacancies of clerk and typist;

(C) during the pendency and final disposal of this petition, the Hon'ble Court be pleased to issue an order of injunction restraining the respondent-Board from terminating the services of the petitioner till the case of the petitioner is considered for the appointment on regular basis to the post of clerk/typist and in the alternative till the regularly selected candidate is available to replace the petitioner;

(D) be pleased to grant such other and further relief/s as the Hon'ble Court may deem fit in the facts and circumstances of the case;"

The prayer made in the present Special Civil Applications reads as under:

"(a) directing the Respondent No.1 Board to consider the case of the petitioner for being appointed on regular basis to the existing (regular) vacancies of;

(b) granting such other and further reliefs and

passing such other and further orders, as the circumstances of the case may require;

(c) awarding the costs of this petition.

AND

(a) restraining the Respondent No.1 Board from terminating the services of the petitioner till the case of the petitioner is considered for the appointment on regular basis to the posts of the clerk and in the alternative till the regularly selected candidate is available to replace the petitioner."

From reading of these prayers, it comes out that both the prayers are substantially identical.

17. The first set of Special Civil Application was decided by this Court on 6.4.95. The decision of this Court appears to be with consensus of the counsel for the parties appearing therein. The petitioners have withdrawn these Special Civil Applications. I have gone through the order made by this Court in the first set of petitions on 6.4.95 and I do not find anything therein that the services of the petitioners could not be terminated unless they fail to get selection in the open selection. This is what something the learned counsel for the petitioners insisted to read which this Court has not ordered when the first set of petitions was decided. Similarly, the other contention of the learned counsel for the petitioners that without giving a chance to the petitioners to appear before Board to compete in the open selection, their services are not liable to be terminated, is again something which the counsel for the petitioners insisted to be read by the Court in the order dated 6.4.95. No such order has been passed by the Court. The counsel who appeared for the Board and the State of Gujarat in first set of Special Civil Applications jointly submitted that in place of present petitioners, no other temporary or adhoc employee shall be employed; that a list of such temporary and adhoc employees shall be prepared remarking therein respective seniority and that whenever one such employee is required to be quit, one who has last joined, will be first asked to quit; that such termination, if required, will be in accordance with law. The counsel for the petitioners in first set of writ petitions submitted that whenever occasion for regular appointment arises, they must be given some chance to appear before the Board and compete with others and in such event their case must be

considered sympathetically from the stand point of relaxation of age requirement bearing in mind their experience in the present services. After recording these two statements made by the counsel for respective parties, the Court has then proceeded to decide the matter and relevant portion reads as under:

"In so far as the opportunity to be given to the petitioners is concerned, Mr. Bhambhanian and Mr. Satwani fairly submitted that the petitioners will be given opportunity to appear before the Board or recruiting authority as and when occasion arises. They further submitted that it is not in their hands to express about their age requirement criteria of the eligibility in this respect, but bearing in mind the fact that the petitioners have served the concerned department of the respondent for some time, it is hereby recommended that the case of the petitioners for relaxation of age shall be sympathetically considered."

The last part of the order reads as under:

"In view of the aforesaid statement and the observations the learned counsel for the respective petitions crave leave to withdraw their respective petitions at this stage. Leave granted. Disposed of as withdrawn. Rule/Notice discharged with no order as to costs."

18. The order dated 6th April 1995 gives out that the respondents had not given out that the services of the petitioners will not be terminated until they are given opportunity to compete in the open selection. It is nowhere the respondents have given out that the petitioners shall be continued in services till they have been given a chance to compete in the open selection. The respondents have given out that in place of the petitioners, no other temporary or adhoc employees shall be employed, meaning thereby that the respondents have made it clear that their services have to be terminated, but they will not be substituted by other temporary or adhoc employees. The next statement has been made that the seniority list shall be prepared and termination of the services as and when considered necessary will be in the order of 'first come last go'. Lastly the statement made that if the termination is required it will be in accordance with law. The statement which has been made by respondents' counsel before this Court on 6.4.95 gives out that the termination of the petitioners has to be

made if required. The statement of the counsel for the respondents made before this Court on 6.4.95 is clear and unambiguous and they have nowhere given out that the service of the petitioners cannot be brought to end until they have been given a chance to compete in with the open selection. The statement which has been made by the counsel for the petitioners makes the position clear. They have accepted these statements made by the counsel for respondents without any reservation. Except that whenever an occasion for regular appointment arises, the petitioners may be given a chance to appear before the Board and compete with others and in case where any of the petitioners cross the age bar, relaxation thereof be considered sympathetically. That was the only reservation and no other what now the counsel for the petitioners is contending. So far as the other reservation is concerned, the counsel for the respondents has very fairly submitted that the petitioners will be given opportunity to appear before the Board or recruiting authority as and when occasion arises, but so far as relaxation of age bar is concerned, they cannot undertake anything. The Court has then passed the order recommending for consideration of the case of the petitioners for relaxation of age sympathetically. Whatever impression, if any, carried by the petitioners regarding their continuation in service until they have been not selected in the open selection, has been removed by this Court by its clarificatory order made on 6.4.95 in the second set of writ petitions being Special Civil Applications No.3547 to 3557 of 1995. This Court has added one more clarification to the order earlier made on 6.4.95. The relevant portion of the order dated 5.5.95 reads as under:

"In my opinion one more clarification would for the present, serve the ends of justice without entering into the merits of the petitioners' case as well as merits of the defence. It is hereby further clarified that in case the petitioner/petitioners is/are terminated or discharged, such termination or discharge order shall be stayed for a period of 10 days from the date of communication of such order to the concerned petitioners."

While passing the aforesaid orders, the Court was clearly of opinion that the respondents have nowhere given out that the services of the petitioners will not be discontinued until they have been given chance to appear in the open selection. The contention of the learned counsel for the petitioners that the termination

of services of petitioners has been made contrary to the orders of this Court dated 6.4.95 is devoid of any substance. The only protection was given by this Court in second set of litigation is that in case any termination order has been made, the same shall not be given effect to for a period of 10 days.

19. Shri Bhambhanja, learned counsel for the respondents submitted that the respondents will abide by the order passed by this Court on 6.4.95 as and when occasion arises for making selection on the post of clerks/typists the petitioners will be given an opportunity to compete in the selection and their case of age bar will be considered sympathetically. Shri Bhambhanja further made a statement that the petitioners are not going to be replaced by other temporary or adhoc appointments. Shri Bhambhanja has stated that it has also been made clear in the order of termination that the petitioners shall be given an opportunity at the competitive examination as and when recruitment is made. The termination of the petitioners have been made on the ground that the appointment has been made without following approved procedure, i.e. no names were called from Employment Exchange or other approved agencies and no procedure was followed for interview/selection. The next ground has been given that the condition mentioned in Government Resolution cited in para-2 of the temporary appointment order were not fulfilled or satisfied. The termination of the services of the petitioners has been made as it was irregular ab-initio. I have already held above that the order of appointment of petitioners on adhoc temporary basis is illegal and contrary to the Government Resolution dated 4.1.65 and this is the very ground on which the services of the petitioners have been terminated.

20. The order of termination of the service of petitioners does not suffer from any infirmity or illegality. Now remains the last contention of the learned counsel for the petitioners to be dealt with. The case of the petitioners and the persons who have been given benefits of the Government Resolution dated 9th August 1994 belong to two different classes. The Gujarat Clerks and Typists (Temporary Appointment Amendment) Rules 1994 has been amended by the Notification dated 9th August 1994. Under the amended provision of the Rules aforesaid, a provision has been inserted to hold special examination for recruitment to the post of clerks for the persons initially appointed temporary to the post of clerks during the month of May and June 1981, under Rules 1981 and who are continued in services. By amending

relevant Rules under Article 309 of the Constitution of India, that class of persons have been given an opportunity to appear in special examination for regularization of their services. The petitioners cannot be given benefits of Notification and the amended Rules for two reasons. Firstly, the petitioners were not appointed on temporary and adhoc basis under the Gujarat Clerks and Typist (Temporary Appointments) Rules 1981 and secondly the petitioners were not appointed during the month of May and June 1981. They have been appointed in the year 1992. In view of this fact, the last contention made by learned counsel for the petitioners is devoid of any substance.

21. The judgments which have been cited by the learned counsel for the petitioners are of little help to the petitioners. Their services have been terminated and that order has been held to be valid. So far as other aspect is concerned, the respondents have already made statements before this Court on 6.4.95 and again in these proceedings that the petitioners will be given opportunity to compete in the open selection, as and when same is made and the question of relaxation of age shall be considered sympathetically. In view of the statements made and order dated 6.4.95 and the statement made by the counsel for respondents in these proceedings, direction of the nature which has been given in the decision cited by the counsel for the petitioners cannot be given in the present case. In the result, all these Special Civil Applications fail and the same are dismissed. Rule is discharged. Ad interim relief granted by this Court stands vacated. No order as to costs.

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22. After pronouncement of the judgment, learned counsel for the petitioners prays that the order vacating the interim relief passed in the matter may be kept in abeyance for a week so that in the meanwhile the petitioners may approach the Division Bench for getting appropriate orders for their continuance in service. It has next been contended that in case this order is not suspended the petitioners' service will come to an end and they will have to pray for mandatory interim relief from the Division Bench.

23. Mr. D. A. Bambania, learned counsel for the respondents, on the other hand contended that as this

court has dismissed the petitions and the interim relief granted therein has been vacated, suspension of the order will amount to two contradictory orders made by the Court. It has next been contended that once the writ petitions have been dismissed and the stay has been vacated, then the appellate court will take care of the situation and in case the petitioners are able to make out a case, the court has ample powers to grant interim relief in mandatory form. Lastly Mr. Bambania contended that after pronouncement of the judgment this Court becomes functus officio and therefore such order cannot be passed.

24. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The stay order has been vacated by this court while dismissing the writ petitions. I find sufficient merit in the contention raised by the learned counsel for the respondents that in case this order is kept in abeyance there will be two contradictory orders of this court. Merely because the petitioners have to pray for mandatory interim relief it does not justify grant of order suspending the judgment of this court. The prayer made by the learned counsel for the petitioner for keeping the judgment in abeyance is rejected.

(S. K. KESHOTE,J)

(sunil)